

REMARKS

Claims 1-13 are pending in the subject application. By this Amendment, applicants have cancelled claim 13 without disclaimer or prejudice, and amended claims 1 and 12. Applicants have amended claims 1 and 12 to more clearly distinguish the invention from the prior art. Support for these amendments may be found in the specification, inter alia at page 9, lines 9-11 and in Fig. 6 of the drawings.

The present invention concerns a novel ventricular assist device for a heart. The device comprises a pump portion with an inflow tube protruding from the pump portion. In the Fig. 6 embodiment, the inflow tube is 146. An adapter sleeve (which in Fig. 6 is sleeve 160) of a first predetermined length is positioned in a telescopic relationship with the inflow tube, forming an extended inflow tube having a total length greater than the first predetermined length. The adapter sleeve carries an adjustable attachment member to permit the adapter sleeve to extend or retract telescopically from an end of the inflow tube.

No issue of new matter is raised by these amendments. Accordingly, upon entry of this Amendment, claims 1-12, as amended, will be pending in the subject application.

In view of the preceding claim amendments and the remarks which follow, applicants maintain that the grounds of rejection set forth in the October 8, 2008 Office Action have been overcome, and respectfully request that the Examiner reconsider and withdraw these grounds of rejection.

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Rejections under 35 U.S.C. §102

A. The Examiner rejected claims 1-3 and 7-11 under 35 U.S.C. § 102(b) as allegedly being anticipated by Kahn et al. (U.S. Patent No. 3,766,567).

The Examiner has rejected the claims as allegedly being anticipated by Kahn et al., considering Kahn et al.'s graft tubing 87 to be "an adjustable attachment member that extends or retracts from an end of the inflow tube." The Examiner has taken the position that there would be inherent compression or extension of the tube in the longitudinal plane. First, Kahn et al. states that the graft tubing 87 is "made of flexible, non-collapsing materials, for example, spirally wound metal wire covered with silicone with an interior bonded covering of Dacron Velour." (Column 6, lines 37-40). This does not mean that the tube "comprises a spring" as stated by the Examiner, nor is there any disclosure in Kahn et al. of an adjustable attachment member to permit the adapter sleeve to extend or retract from the end of the inflow tube. It is speculative to consider tubing 87 of Kahn et al. to have an adjustable attachment member to permit it to extend or retract from the end of the inflow tube, and this construction and function should not be assumed.

Further, applicants' claims have now been amended to point out that the adapter sleeve is in a telescopic relationship with the inflow tube and that it carries an adjustable attachment member to permit the adapter sleeve to extend or retract telescopically from the end of the inflow tube. This is very clearly shown in Fig. 6 and described, for example, on page 9, lines 9-10. There is nothing in Kahn et al. that even resembles this. Kahn et al.'s graft tubing 87 is sutured in place, and is fixed, preventing any

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telescopic movement. Accordingly, Kahn et al. teaches away from applicants' claimed invention and provides a construction that is precisely what applicants do not want. Kahn et al.'s teaching of a fixed graft tube 87 is contrary to the purposes and results of applicants' novel invention as now claimed, and the Kahn et al. reference should be withdrawn.

In view of the foregoing remarks applicants request that the Examiner reconsider and withdraw this ground of rejection under 35 U.S.C. §102(b).

Rejection under 35 U.S.C. §103

A. The Examiner rejected claims 4, 6 and 12-13 as allegedly unpatentable under 35 U.S.C. § 103(a) over Kahn et al. (U.S. Patent No. 3,766,567).

As an initial matter applicants direct the Examiner to their comments above concerning the differences between their invention as recited in the claims, as amended above, and the disclosure of Kahn et al. Applicants maintain that in view of these differences it would not have been obvious to make applicants' claimed invention. In this regard, applicants note that claims 4 and 6 depend from claim 1 which has been amended to more clearly recite the differences from the cited art including Kahn et al. Further claim 12 which depends therefrom has been amended in a manner similar to claim 1 and claim 13 has been cancelled.

In view of the preceding remarks, applicants request that the Examiner reconsider and withdraw the rejection of claims 4, 6 and 12-13 as obvious over Kahn et al.

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B. The Examiner also rejected claim 5 under 35 U.S.C. § 103(a) as allegedly unpatentable over Kahn, et al. (U.S. Patent No. 3,766,567).

Claim 5, which is dependent upon claim 1, specifies that the adapter sleeve includes cylindrical grooves forming perforations on the surface of the sleeve whereby the sleeve may be separated along the grooves. This is disclosed on page 10 of the specification, last paragraph. On page 6 of the Office Action, the Examiner has tried to discard this claimed invention by stating that "it would have been obvious" without any proper basis for such statement. Applicants contend that none of the prior art references disclose or teach perforating an adapter sleeve as claimed to allow customization of the length of the adapter sleeve. This feature cannot be cast aside as "obvious" merely because it has a useful function.

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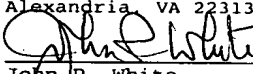
CONCLUSION

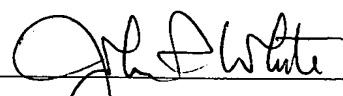
A sincere effort has been made to distinguish the invention from the prior art references. In view of the amendments and remarks made hereinabove, applicants respectfully submit that the grounds of rejection set forth in the October 8, 2008 Office Action have been overcome. Accordingly, applicants earnestly solicit allowance of the claims now pending, i.e. claims 1-12, as amended.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee is deemed necessary in connection with the filing of this Amendment. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	
	January 8, 2009
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